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6
7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF WASHINGTON
AT YAKIMA

9 TINFRA, LLC, a Delaware limited
liability company,

10 Plaintiff,

11 v.

12 BIT CAPITAL GROUP, LLC, a
13 Delaware limited liability company;
JIMMY ODOM, an individual; and
14 JAMES THOMMES, an individual,

15 Defendants.

Case No.

**COMPLAINT FOR BREACH OF
CONTRACT, WILLFUL
MISCONDUCT, GROSS
NEGLIGENCE AND FRAUD**

16
17 COMES NOW Plaintiff TINFRA, LLC, by and through its attorneys in this
18 matter, Buchalter, a Professional Corporation, for causes of action against
19 Defendants BIT Capital Group, LLC, Jimmy Odom, and James Thommes
20 (collectively, “Defendants”), and alleges as follows:

21 **I. PARTIES**

22 1. TINFRA LLC (“Plaintiff”) is a Delaware limited liability company
23 registered to do business in Washington. Plaintiff has paid all fees and performed
24 all other prerequisites for the maintenance of this action.
25
26

1 2. Defendant BIT Capital Group, LLC (“BitCap”) is a Delaware limited
2 liability company registered to do business in Washington. Upon information and
3 belief, the sole members/governors of BitCap are Defendants Jimmy Odom
4 (“Odom”) and James Thommes (“Thommes”). See Exhibit A.

5 3. Defendant Odom is an individual who does business in this State and
6 County, and, upon information and belief, lives in the State of Washington.

7 4. Defendant Thommes is an individual who does business in this State
8 and County, and, upon information and belief, lives in the State of Washington.

9 5. BitCap, Odom and Thommes may collectively be referred to herein as
10 the “Defendants”.

11 **II. JURISDICTION AND VENUE**

12 6. This Court has jurisdiction over this matter pursuant to 28 U.S.C.
13 Section 1332 because the amount in controversy exceeds \$75,000 and because the
14 Plaintiff and the Defendants are citizens of different states.

15 7. Plaintiff’s sole member is Telnyx, LLC, whose sole member is Telnyx,
16 Inc.

17 8. Telnyx, Inc. is incorporated in Delaware with a principal place of
18 business in Illinois.

19 9. Upon information and belief, the sole members of BitCap – Odom and
20 Thommes – are citizens of Washington.

21 10. Venue is proper in this Court because the Agreement, and other issues
22 underlying the dispute including the Property/Primary Hosting Site, are located in
23 Quincy, Grant County, Washington.

24 **III. STATEMENT OF MATERIAL FACTS**

25 11. On September 1, 2021, Plaintiff and BitCap entered into a “Group
26 Server Management Agreement” (the “Agreement”) wherein BitCap agreed to,

1 among other things, “**purchase**” real property necessary for the Primary Hosting
2 Site (the “Site”). Section 14 of the Agreement (emphasis supplied). The Agreement
3 is not attached as an exhibit because it contains a confidentiality provision.

4 12. In return, Plaintiff agreed to advance \$1,400,000 to BitCap to be used
5 exclusively to purchase and upgrade the Site. Section 14 of the Agreement.

6 13. Upon information and belief, BitCap did not use the \$1,400,000 paid
7 by Plaintiff to purchase the real property necessary for the Site.

8 14. BitCap’s operations are located in Washington State.

9 15. A national title company doing a title search for the real property in
10 question, listed in the Agreement as 935 Port Industrial Way, Quincy, Washington,
11 and more commonly known Parcel D in a binding site plan filed with Grant County,
12 recording number 1475650 (the “Property/Primary Hosting Site”) is owned by
13 Redoubt Networks LLC (“Redoubt”). This is confirmed by a Statutory Warranty
14 Deed conveying the Property/Primary Hosting Site to Redoubt dated October 12,
15 2022, Grant County Recorders number 1479123. See Exhibit B. Redoubt is a
16 Washington limited liability company, owned solely by Eric Yingling and has no
17 connection to Defendants, per its annual reports filed with the state. See Exhibit C.

18 16. A recent search of the Grant County Assessor’s website confirmed that
19 BitCap owns no real property located in Grant County at this time, including the
20 Property/Primary Hosting Site. This is also confirmed by recent filings by BitCap
21 with the Washington State Secretary of State.

22 17. Based on this information, it is clear that BitCap did not purchase the
23 Property/Primary Hosting Site with the funding from the Plaintiff, expressly
24 provided for that purpose.

25 18. The purchase of the Property/Primary Hosting Site was critical to
26 Plaintiff and the reason it was expressly stated as a requirement in the Agreement

1 was because Plaintiff supplied over \$30,000,000 worth of CPU's and servers for
2 the use at and on the Property/Primary Hosting Site. Meaning simply, if there were
3 any issues, Plaintiff could obtain control over the Property/Primary Hosting Site,
4 for which Plaintiff advanced \$1,400,000 and its equipment valued at over
5 \$30,000,000.

6 19. BitCap's failure to purchase the Property/Primary Hosting Site not
7 only breaches the Agreement but also constitutes gross negligence, fraud and willful
8 misconduct, rendering all Defendants liability to Plaintiff for all damages caused as
9 a result of the same, which, at this time, are estimated to exceed \$2,466,760 and
10 increase daily, in addition to the contractual requirement to repay the \$1,400,000.
11 Section's 6, 14 and 18 of the Agreement.

12 20. BitCap has also breached the Agreement, by, without limitation,
13 failing to provide the Services required by Section 2 of the Agreement and repay
14 the \$1,400,000 advance, after demand based on the material breaches identified
15 above.

16 21. On October 25, 2022, Plaintiff gave BitCap Notice of Material
17 Breaches of the Agreement.

18 22. BitCap failed to cure the breaches, and as a result, Plaintiff is entitled
19 to the immediate return of its \$1,400,000 and the other damages causes by the
20 breaches of the Agreement.

21 23. The Agreement does not release the members, governors, officers or
22 directors from indirect, incidental, special, punitive, or consequential damages, if
23 the acts complained of were grossly negligent, fraudulent or willful. Section 18 of
24 the Agreement.

25 24. Odom and Thommes have committed willful, grossly negligent and
26 fraudulent acts, rendering each of them jointly and severally liable for all damages

1 listed in Section 18 of the Agreement, which have been incurred, and which will
2 continue to be incurred, by the Plaintiff.

3 25. Specifically, Odom and Thommes:

- 4 • made representations to purchase the Property/Primary Hosting Site,
5 which were false, misleading and/or omissions by not purchasing the
6 Property/Primary Hosting Site when the \$1,400,000 was paid to
7 BitCap by the Plaintiff;
- 8 • the promise to purchase the Property/Primary Hosting Site was
9 material;
- 10 • each knew the representation were false or became false, once they
11 accepted the \$1,400,000 from the Plaintiff but did not purchase the
12 Property/Primary Hosting Site;
- 13 • made the representations with the intent that the Plaintiff would pay
14 the \$1,400,000, which was intended, in part, to purchase the
15 Property/Primary Hosting Site;
- 16 • that the Plaintiff acted and funded in reliance on BitCap's purchasing
17 the Property/Primary Hosting Site, which the funds were
18 contractually earmarked for; and
- 19 • damaged Plaintiff as a result of their willful misconduct, gross
20 negligence and fraud in taking Plaintiff's \$1,400,000 and not
21 purchasing the Property/Primary Hosting Site and continues to cause
22 additional damages which at this time total no less than \$2,466,760
23 and increase daily.

24 26. As a result of their willful misconduct, gross negligence and fraud,
25 Odom and Thommes are jointly and severally liability to the Plaintiff for amounts
26 which are currently estimated to exceed \$3,866,760.

IV. CAUSE OF ACTION

A. Breach of Contract

1 27. Plaintiff incorporates by reference all prior paragraphs as if fully set
2 forth herein.

3 28. BitCap has materially breached its contract with Plaintiff, by failing to
4 purchase the Property/Primary Hosting Site and for failing to provide the required
5 Services.

6 29. Despite demand, BitCap has failed to cure its breaches and return the
7 \$1,400,000.

8 30. As a result, Plaintiff is entitled to the return of its \$1,400,000, plus
9 damages in the current amount of no less than \$2,466,760, which amount grows
10 daily, plus fees and costs permitted under the Agreement and at common law.

11 **B. Willful Misconduct, Gross Negligence and Fraud**

12 31. Plaintiff incorporates by reference all prior paragraphs as if fully set
13 forth herein.

14 32. Odom and Thommes represented to the Plaintiff that the \$1,400,000 in
15 funds would be used “exclusively for the purchase and upgrades needed for the
16 Primary Hosting Site to host all the hardware of the Client”.

17 33. Odom and Thommes knew this representation was false at the time
18 made, or at the time it took \$1,400,000 from the Plaintiff, which conduct was
19 willful, grossly negligent and/or fraudulent.

20 34. As a result, Odom and Thommes are personally liable to Plaintiff for
21 all damages their acts and/or omissions caused, including the payment of the
22 \$1,400,000 by the Plaintiff, other damages in the amount of no less than \$2,466,760,
23 which grows daily, and all other damages permitted by the Agreement, and fees and
24 costs.

25 35. Plaintiff is entitled to judgment against Odom and Thommes as the
26 members, governors, officers and/or directors of BitCap because of their willful

1 misconduct, gross negligence and/or fraud, which triggers the bad boy carve out
2 located in Section 18 of the Agreement.

3 **V. REQUEST FOR RELIEF**

4 Having fully set forth its Complaint, Plaintiff respectfully requests that the
5 Court grant the following relief against Defendants:

6 1. For Judgment against BitCap for its breaches of contract in the amount
7 of \$1,400,000, for other damages currently estimated at \$2,466,760, and for fees
8 and costs permitted by the Agreement and the common law;

9 2. For judgment against Odom and Thommes for their willful conduct,
10 gross negligence and/or fraud in taking the \$1,400,000 in funds from Plaintiff but
11 not purchasing the Property/Primary Hosting Site, as mandated by Section 14 of the
12 Agreement, and for other breaches of contract causing damages estimated at the
13 present time to be no less than \$2,466,760, for all other damages permitted by
14 Section 18 of the Agreement, and for fees and costs permitted by the Agreement, in
15 equity or at common law;

16 3. For its costs and legal fees as permitted by the contract, equity,
17 common law or statutes; and

18 4. For such other and further relief as this Court deems just and equitable.

19 DATED: March 24, 2023.

20 BUCHALTER
21 A Professional Corporation

22 *s/ Bradley P. Thoreson*

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